

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ALAN W. LUMSDEN, #147753

Petitioner,

v.

Case No. 07-CV-10140
Honorable Denise Page Hood

MARY BERGHUIS

Respondent.

ORDER DENYING PETITIONER'S MOTION TO STAY PROCEEDINGS AS MOOT

This matter is before the Court pursuant to the Petitioner's Motion to Stay Proceedings [Docket No. 9, filed April 17, 2008]. Petitioner, Alan W. Lumsden, a Michigan state prisoner currently confined at Earnest C. Brooks Correctional Facility in Muskegon, Michigan, has filed a *pro se* habeas corpus petition under 28 U.S.C. § 2254. Petitioner was convicted of two counts of first-degree felony murder, two counts of armed robbery, and one count of felony firearms. He was sentenced to life without parole, one hundred to two hundred years, and a mandatory two year term, respectively.

On May 1, 2007, the Court issued an order to show cause within twenty-one(21) days from the date of the order as to why this case should not be dismissed on failure to exhaust state court remedies and/or statute of limitations grounds. On May 23, 2007, Petitioner filed a motion to extend the time in which to respond to the show cause order for a period of forty-five to sixty days. The reasons Petitioner cited for requiring an enlargement of time in which to respond were: (1) lack of legal knowledge, (2) reliance upon a Michigan Department of Corrections ("MDOC") certified legal writer who was otherwise busy working full time in the food service department of his prison facility; (3) indigency; (4) lack of full access to the prison law library;

(5) lack of time in which to respond due to his full-time prison assignments, and (6) lack of time in which to respond due to his work in pursuing another pending habeas matter in this court challenging a different conviction, *Lumsden v. Berghuis*, No. 2:06-cv-14966 (E.D. Mich. Nov. 3, 2006) (Tarnow, J.)¹ Petitioner did not submit a response to the Court's show cause order, nor did the Court address Petitioner's motion for extension.

On July 23, 2007, Petitioner filed another motion for extension requesting another forty-five to sixty days to respond to the Court's show cause order, citing the same reasons for delay. Petitioner again did not submit a response to the Court's show cause order within the time frame he requested. On September 5, 2007, Petitioner filed a traverse brief in *Lumsden v. Berghuis*, No. 2:06-cv-14966. The Court addressed Petitioner's second motion for an extension in its March 20, 2008 Order by granting the Petitioner's request and giving him until May 1, 2008² in which to respond to the show cause order.

On April 17, 2008, Petitioner filed a Motion to Stay Proceedings [**Docket No. 9**] indicating that a resolution of the other habeas case, *Lumsden v. Berghuis*, No. 2:06-cv-14966, might also resolve this matter. In that matter, the Petitioner filed objections to the Magistrate Judge's Report and Recommendation ("R&R"), (issued July 18, 2008) which recommended denying habeas relief. On August 25, 2008, Judge Tarnow adopted the R&R. Petitioner's instant motion to stay the proceedings is now moot.

¹In the 2006, habeas case, at trial in Washtenaw County, Petitioner was convicted of first-degree murder and armed robbery. In the instant habeas case, Petitioner is challenging his conviction in Wayne County for first-degree felony murder, armed robbery and felony firearm. The offenses in both Washtenaw County and Wayne County arose from events occurring on the same day, September 22, 1985. Petitioner was sentenced on June 27, 1986 in Washtenaw County. Petitioner was sentenced on November 20, 1987 in Wayne County.

²Although the Order extends the time to May 1, 2007, it is clear 2007 is an error since the Order was entered on March 20, 2008.

I. CONCLUSION

Accordingly,

IT IS ORDERED that Petitioner's Motion to Stay Proceedings [**Docket No. 9, filed April 17, 2008**] is DENIED as MOOT.

IT IS FURTHER ORDERED that Petitioner has until September 26, 2008 to respond to the Court's Order to Show Cause.

s/Denise Page Hood
Denise Page Hood
United States District Judge

Dated: August 28, 2008

I hereby certify that a copy of the foregoing document was served upon counsel of record and

Alan Lumsden #147753
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on August 28, 2008, by electronic and/or ordinary mail.

s/Lisa Ware for William F. Lewis
Case Manager